CONTENTS


| | | Paragraphs | Page |
|---|---|---|---|
| I | INTRODUCTION | 1 - 5 | 3 |
| | A The practice of torture: scope and context | 6 - 24 | 3 |
| | B Prison conditions | 25 - 31 | 9 |
| II | THE PROTECTION OF DETAINEES AGAINST TORTURE: LEGAL ISSUES | 32 - 45 | 11 |
| | A Forensic Institute | 46 | 14 |
| | B Ombudsman | 47 - 48 | 15 |
| III | CONCLUSIONS AND RECOMMENDATIONS | 49 - 57 | 15 |

# I. INTRODUCTION

1. Following a request by the Special Rapporteur, the Government of Romania invited him to visit the country within the framework of his mandate. The visit, which took place from 19 to 29 April 1999, enabled the Special Rapporteur to achieve his aim of collecting first-hand information from a wide range of contacts in order to better assess the situation with regard to the practice of torture and ill-treatment in Romania.

2. During his visit the Special Rapporteur held meetings in Bucharest from 19 to 22 April and on 29 April with the following authorities: the Minister of Justice; the Deputy Ombudsman; the General Prosecutor; the Chief Prosecutor, Military Prosecutor's Office; Supreme Court of Justice; the Secretary of State, Department for Child Protection; Secretary of State, Minister of the Interior; the First Deputy General Inspector of the Romanian Police; the President of the Human Rights Commission of the Senate; the President of the Human Rights Commission of the House of Deputies; the Director of the Institute of Legal Medicine; and the General Director, Department for Treaties and Consular Affairs, Ministry of Foreign Affairs.

3. The Special Rapporteur visited the following cities in Romania besides Bucharest: Craiova, Bacau and Iasi. In each of these cities the Special Rapporteur met with the County Police Chief Inspector and visited police lock-ups. In Bucharest the Special Rapporteur visited the Jilava penitentiary and the Jilava penitentiary hospital, as well as Police Station 19. In addition, he visited the Craiova penitentiary, which houses those prisoners who have received life sentences in Romania, and the Iasi penitentiary. Further, the Special Rapporteur made brief visits to police lock-ups in Urziceni municipality and Vashlui.

4. The Special Rapporteur also met persons who themselves or whose relatives had allegedly been torture victims and he received verbal and/or written information from non-governmental organizations, including the following: the Association for the Protection of Human Rights - Helsinki Committee (APADOR-CH); the Romanian Group for the Defence of Human Rights; the Romanian Independent Society of Human Rights (SIRDO); the League for Human Rights Protection (LADO); the ICAR Foundation; and Rromani CRISS (Romani Centre for Romani Studies and Social Action).

5. The Special Rapporteur thanks the Government of Romania for allowing him to make this visit and for its valuable collaboration. The Special Rapporteur also wishes to thank UNDP-Bucharest for its assistance throughout the course of the mission.

## A. The practice of torture: scope and context

6. During the course of the past few years, the Special Rapporteur has transmitted numerous allegations to the Government concerning ill-treatment and torture of detainees by the police (see, for example, E/CN.4/1999/61, paras. 597-613). It is alleged that police frequently use force to extract confessions or to punish criminal suspects.

7. Most government officials with whom the Special Rapporteur met during his mission to Romania emphasized that torture and ill-treatment is prohibited under the Constitution and the Criminal Code. For example, the Minister of Justice stated that torture is not a dangerous

phenomenon in Romania and that, when committed, it is malpractice by a civil servant that can be criminally sanctioned. He stressed that cases of torture and ill-treatment are isolated and are never committed for political reasons, in contrast to the communist era.

8. However, the President of the Commission on Human Rights of the Senate informed the Special Rapporteur that her Commission has knowledge of many cases of torture or ill-treatment committed by the police. She noted that ill-treatment primarily takes place in police lock-ups, although there are also cases of abuse reported from the penitentiaries. Her harshest criticism was directed toward the authorities who, according to her, are rarely able to provide any answers or solutions when complaints are filed. She was particularly critical of the judiciary, stating that it is almost impossible to solve these cases when the judicial system is involved. In her view, judges in Romania consider themselves a privileged social class who believe that their independence means that they answer only to the law and not to anyone else. She also lamented the fact that there is little sympathy among the general public for criminal suspects or prisoners because of the high crime rate in Romania.

9. The high crime rate that currently prevails has also created extremely difficult conditions for the police. The Procurator General acknowledged that there are some problems, but felt that the human factor should be appreciated because of the conditions in which police must work. He noted that most of the cases of abuse involve non-commissioned officers who are poorly paid. He further noted that, while the police force is undergoing changes, many policemen were trained under the prior, communist regime when the State was more likely to resort to repression. Nevertheless, he maintained that tremendous improvements have been made and that cases of abuse by the police are rare and isolated.

10. Representatives of non-governmental organizations with whom the Special Rapporteur met painted a different picture. According to these NGO representatives, torture and ill-treatment during the early phases of arrest are common in all regions of the country. The abuse normally takes the form of severe beatings, although there are cases where suspects are hung suspended from a locker or other fixture, cigarette burns are also reported frequently. In the vast majority of the cases, the beatings are used to extract a confession from the suspect. Some of the NGO representatives also alleged that Roma suspects are particularly at risk of torture or ill-treatment.

11. As noted above, it is alleged that the early phases of detention are the period in which a criminal suspect is most at risk of being subjected to torture or ill-treatment. Under the Romanian Constitution, a suspect may be held for 24 hours in the absence of an arrest warrant. During this 24-hour period, the police may hold a suspect in the police lock-up under a police custody warrant; in these cases, the suspect must be registered in the lock-up records. However, the Law on Police No. 26/1994 provides that persons who refuse to identify themselves, or whose identity cannot be established, may be "led" to the police station for the purposes of identification; this period cannot last longer than 24 hours. Non-governmental organizations argue that this provision violates the Constitution by allowing a 24-plus-24-hour period. Police officials whom the Special Rapporteur met stated that in practice the process of identification takes at most a few hours and they denied that they hold individuals for up to 48 hours without an arrest warrant being issued. The Secretary of State of the Ministry of the Interior noted that

this is not a penal measure, but rather an administrative measure for the purposes of identification, but he acknowledged that the law does allow for a person to be held for a 24-hour period for the purposes of identification.

12. Of particular concern to the Special Rapporteur is the fact that the law regulating the conditions of pre-trial detention, Order 0410, which dates from 1974, remains classified. The Minister of State of the Ministry of the Interior informed the Special Rapporteur that a draft law has been presented to Parliament which would be available to the public. In the meantime, the current law, which is secret, remains in effect.

13. Several government interlocutors expressed the view that the pre-trial detention centres should be placed under the authority of the Ministry of Justice, rather than the Ministry of the Interior. Both the Secretary of State of the Ministry of the Interior and the Deputy General Inspector of Police expressed the view that the police should not control pre-trial detention, but both noted that the legislative reforms required to make such a change would be a slow process. The Military Prosecutor was also of this view. In the absence of such change, there are internal techniques to prevent the ill-treatment of detainees. In particular, several interlocutors mentioned the fact that civilian prosecutors may inspect the police lock-ups or prisons at any time. Similarly, the General Inspectorate of Police carries out spot-checks of police lock-ups. However, the Prosecutor General admitted to the Special Rapporteur that the heavy caseloads of the civilian prosecutors has made it more and more difficult to carry out such inspections. The Military Prosecutor also suggested that the problem would "disappear" if the civilian prosecutors were more involved with the supervision of the police. To this end, he noted that the civilian prosecutors should inspect more often and should make spot-checks. The Military Prosecutor also recommended that no suspect should be held without prior authorization from the prosecutor, even for the first 24 hours of detention. Further, defence counsel should be allowed to be present during those first 24 hours.

14. With respect to access to counsel, Romanian law provides that a lawyer must be present throughout the criminal procedures. However, as the Secretary of State of the Ministry of the Interior noted, the criminal procedure does not formally begin until an arrest warrant has been issued by the prosecutor, and therefore, an individual does not have access to a lawyer while being held under a police custody warrant. Police officials invariably informed the Special Rapporteur that a suspect has the right to an attorney at any point and is informed of this right by the police, but most of the detained persons with whom the Special Rapporteur met informed him that they were rarely informed of this right. Indeed, in most cases, an ex officio lawyer was appointed and was only present when the suspect was brought before the prosecutor to make a statement. In several cases, the suspects were not even aware at the time that a lawyer was present, because the ex officio lawyers did not provide any legal advice or guidance.

15. During the course of his mission, the Special Rapporteur received several testimonies from individuals who claimed to be victims of police abuse. The testimonies were taken from detainees, in both police lock-ups and prisons, and from individuals who had been released from custody. The Special Rapporteur does not take a position on the veracity of any one allegation, but does note that there is a consistency in the allegations that leads him to believe that ill-treatment does in fact occur. The testimonies may be summarized as follows:

16. Miron Constantin, held in Jilava penitentiary, outside Bucharest, at the time of the visit, was arrested on 29 September 1995 by the Bucharest police, allegedly without charge. He was initially held in the Bucharest Police Headquarters, where he claims to have been subjected to beatings with wooden sticks by four police officers. The officers were demanding that he confess to a murder, which he refused to do. He claims to have suffered a broken collarbone, three broken ribs, a broken nose and a broken finger on his right hand as a result of the beatings. After going on hunger strike to protest the beatings, he finally confessed to the murder when the officers allegedly threatened to harm his daughter. Despite the fact that he subsequently retracted the confession in court, he was found guilty of murder on 18 February 1999. He had filed a complaint with the non-governmental organization SIRDO, but to his knowledge no investigation was ever made into his allegation of abuse by the police officers.

17. Danut Iordache, also held in Jilava at the time of the visit, was reportedly arrested at his home in Bucharest on 3 February 1997 towards 6 a.m. He was allegedly taken by the police to the Section 14 police station and then released on 5 February. He was admitted the same day to the emergency service of the hospital for a broken jaw and bruising on the chest caused by beatings allegedly administered by police officers. This case is reflected in the Special Rapporteur's report to the Commission on Human Rights at its fifty-fifty session (E/CN.4/1999/61, para. 604). During the interview, he informed the Special Rapporteur that he was due to be sentenced on 27 April 1999, although he hoped to be released since there was no evidence against him and the "gang" responsible for the crime had stated that he was not involved in the thefts. He had lodged a complaint with the Military Prosecutor against the police officer; this was confirmed by the Government.

18. Gabriel Marian Badila, held in Craiova penitentiary at the time of the visit, was arrested on 6 March 1996 in the village of Lilieste in Prahova county on charges of murder and arson. He was initially taken to the police station in Breaza where he was held in the police lock-up for 24 hours. He claims to have been chained to a wall and subjected to kicks and beatings with a baton for several hours to force him to confess to the crime. He also alleges that he was beaten in the presence of the prosecutor when he retracted the confession and that the prosecutor herself slapped him twice when he requested a medical examination. He further claims that he requested and was denied access to an attorney during this interrogation. He ultimately confessed to the crime of arson when his family was threatened, but then denied the confession when he appeared before the court. He claims that there is no evidence against him beyond the confession and a necklace of the victim, which he claims had been given to him as a gift. At no point was he given a medical examination, with the exception of a psychiatric examination when he was transferred to Jilava penitentiary. He was subsequently found guilty of the crime of arson and is now awaiting the appeal. Although he has no lawyer, he has sent three applications to the Military Prosecutor complaining of the police abuse, but has received no response. He has now contacted SIRDO for assistance.

19. Constantin Marian, held in Craiova penitentiary at the time of the visit, was reportedly arrested in 1998 and detained at the Tirgu Jiu police station, where two investigating officers allegedly threatened that a distinctive mark would be put on his file in order for the judge to issue the suspect the longest sentence possible. He was nevertheless not ill-treated. He did inform the Special Rapporteur, however, that the conditions of detention in Tirgu Jiu are very

poor, with the inmates handcuffed or chained when held in isolation cells. He also claimed that torture was commonly practised in prison, although he himself had never been a victim.

20. Valimareanu Eugen, also held in Craiova penitentiary at the time of the visit, was reportedly involved in a fight along with his brother in a bar in his village of Vulja, in which two persons died. He claims to have reported to the police station in Timisoara on 21 May 1998 and then to have been transferred back to Vulja in order to be interrogated. There he was allegedly beaten several times in order to make him confess that he had participated in the killing of the two aforementioned persons. He claims to have been rolled in a carpet and beaten with a wooden stick, the so-called rotissoire, two or three times a week for more than two hours until he became unconscious. He informed the Special Rapporteur that these beatings only stopped when he signed a statement admitting to the facts. He claims that no lawyer was present at the time he signed the statement. He was then transferred back to Timisoara. He alleges that his brother was subjected to the same treatment and, after three months of detention in police custody, made a statement implicating him, in response to promises that doing so would reduce his own sentence. Both were subsequently sentenced to life imprisonment. Their appeals were rejected by the Pitesti Appeals Court and they are currently awaiting an appeal to the Supreme Court. At the time of the visit, both brothers were on hunger strike to protest the sentences.

21. Petrica Ailenei, who was being held at the Iasi penitentiary at the time of the visit, was arrested on 6 February 1999 in Iasi following a quarrel in a bar. He was allegedly beaten on the street and then taken back to the bar, where he was again beaten, punched and kicked on the upper part of his body, his legs and head by gendarmes and police officers, as well as the bartender. He was then taken to the municipal police station, where he refused to make a statement. In the basement of the police station, he was allegedly subjected to further beatings. At 10 p.m. he was transferred to the county police lock-up, but the officer-in-charge refused to detain him because he was covered in blood. He was thereafter taken to the hospital, where he received stitches on his temple. He reported that he also suffered a broken nose but, despite his complaints, the doctor did not examine the bruises on his legs and upper body. He also claims that the police refused to allow him to remain at the hospital, contrary to the doctor's advice. He informed the Special Rapporteur that he was given no medical certificate following this hospital visit. On 9 February 1999, he was brought before a public prosecutor, who informed him that he had been charged with breach of public order. In the presence of an ex officio lawyer he signed a statement containing his version of the facts. He alleges that another statement was presented in court admitting to rape and theft. One week later, at his request, he was examined by the Forensic Institute, but he had not seen the report produced. On 30 March, the prosecutor refused to release him on bail, but on 5 April the arrest warrant was not prolonged. He informed the Special Rapporteur that SIRDO had filed a complaint on his behalf to the Military Prosecutor concerning the beatings by the police and gendarmes.

22. Florin Macovei, also interviewed at the Iasi penitentiary, was reportedly arrested with an accomplice on 20 June 1998 at the railway station in Bucharest for an alleged theft in the Federal Republic of Yugoslavia. Both were reportedly taken to the General Directorate for the Railways in Bucharest, where they were allegedly detained and beaten for a day and a half without an arrest warrant. He claims that they were beaten over a period of eight days in order to extract a confession. According to Florin Macovei, he was handcuffed to a cell door and beaten with fists and truncheons, and he was put on the floor face down with a piece of wood on his back on

which an officer would repeatedly jump. The officers also threatened to kill him and he could hear his friend being ill-treated as well. He nevertheless refused to make any statement while in police custody. On the third day of detention they were informed that they were under an arrest warrant and on the eighth day they were taken to the prosecutor, at Macovei's request. During the transportation to the prosecutor's office, the police threatened to continue the beatings if they did not confess or if they complained about the beatings. At the prosecutor's office Macovei made a statement recognizing the facts, that is, that he was present when his friend stole some items from the complainant, for whom they had been working and who had refused to pay them. An ex officio lawyer was present at the prosecutor's office, but the lawyer did not consult with Florin Macovei. Two investigating officers were also present. He claims that the prosecutor obviously knew that he had been beaten, but nevertheless accepted the statement. He was then taken back to the basement of the railway police premises and held for a further 24 hours without being subjected to further ill-treatment, then transferred to Iasi. He informed the Special Rapporteur that he had filed a complaint with the military prosecutor's office in Bucharest in August 1998, and then to the military prosecutor's office in Iasi. Neither has replied to his complaint.

23. Viorel Baciu, also interviewed at Iasi penitentiary, was detained on 19 September 1996 on charges of stealing grain from public grounds. He was immediately taken to the county police station in Suceava and then to the prosecutor's office. He claims that he was implicated in the crime by another suspect, who had been tortured and promised a lighter sentence if he provided the names of his accomplices. Viorel Baciu, however, alleged that the real motivation for his arrest was the fact that the date of 20 September had been set for the court hearing of his complaint against police officers who he claims had beaten him during a prior arrest in 1988. He was eventually found innocent of the charges in this earlier case. When he was arrested in 1996, the police taunted him by telling him that he would miss his court hearing. When he was taken to the prosecutor, he demanded to be confronted with his accuser, the prosecutor refused. Viorel Baciu therefore refused to make a statement. He claims that he could prove that he could not possibly have committed the alleged crime because he was able to provide records that showed he was at the dentist at the time of the crime. He further claims that the defendant who implicated him had admitted that he had given Viorel Baciu's name under torture and that two others were in fact involved in the crime. He alleges that an arrest warrant for 30 days was issued and after the 30 days he was transferred to the Iasi penitentiary without a court order. He claims that it was more than a year before the court issued the order and, therefore, his detention was illegal. He also alleged that he had been threatened by prison officials not to complain about his treatment.

24. As mentioned above, the Special Rapporteur visited police lock-ups in Bucharest, Craiova, Bacau, Iasi, Urziceni municipality and Vaslui. In each of these lock-ups the Special Rapporteur visited detention cells and spoke with detainees. In the vast majority of the cases, the detainees had confessed to the crime because their guilt was obvious. Virtually none of the detainees complained of ill-treatment on the part of the police. The Special Rapporteur recognizes that those still in detention at police lock-ups, where abuse is reported to take place most frequently, may fear reprisals and, therefore, be hesitant to report abuse. Nevertheless, there were no outward signs of abuse, for example bruises or cuts, and as most detainees readily conceded their guilt, coercion was not necessary. One exception involved a detainee who wished to remain anonymous. This individual was reportedly rearrested on 26 April 1999 for

thefts allegedly committed in the past, for which he had been arrested on a previous occasion. He was initially taken to his home village police station where he was given "a lesson" by being beaten on the back by three police officers with rubber truncheons and punched on his eye. The bruises allegedly resulting from this assault were still visible at the time the Special Rapporteur met this individual. He stated that he was not forced to make a statement, but merely asked to confess to thefts he had committed. In the evening of the same day he was taken to a police station in the countryside. This type of treatment is said to be commonplace in countryside police stations.

B. Prison conditions

25. All the government officials with whom the Special Rapporteur spoke acknowledged the unacceptable conditions found throughout the penitentiary system. The primary problem is the extreme overcrowding that exists in all prisons and which has created conditions which may be described as inhumane. Jilava penitentiary was built to house 1,385 inmates, but there were 3,151 inmates present when the Special Rapporteur visited, with only 2,564 beds available for the prisoners. The governor of the penitentiary informed the Special Rapporteur that the prison normally has an average of over 3,200 inmates. It was reported to the Special Rapporteur that at Craiova penitentiary, with capacity for 1,450, there were 2,415 detainees, sharing 2,060 beds. The governor of the Iasi penitentiary informed the Special Rapporteur that its official capacity was 1,250, but the actual population at the time of the visit was 2,223, with 1,891 beds available for the prisoners. In general, the most severe overcrowding involves males over the age of 21. In cells that the Special Rapporteur saw in Craiova, the bunks were stacked three or four high, reaching to the ceiling, yet there were still not enough beds for the number of persons per cell, requiring the inmates to sleep in shifts.

26. According to the President of the Human Rights Commission of the Senate, the "dramatic state of prisons" is not determined by an exaggerated crime rate, as many claim, but rather, by an exaggerated incarceration rate. The Minister of Justice also indicated to the Special Rapporteur that overcrowding could be reduced by changing sentencing to allow for bail. In this regard, he pointed out that both the Senate and the Chamber of Deputies had passed a law to have misdemeanours punished by community service. Statistics provided by the governor of Jilava penitentiary indicate the nature of the problem. According to his records, of the 3,253 persons detained at the penitentiary, 1,104 were first-time offenders, most of them charged with theft. Between 1995 and 1998, national statistics indicate that over 50 per cent of detainees were being held for the crime of theft. This is consistent with what the Special Rapporteur found to be the situation in police lock-ups. For example, in Police Station 19, the Special Rapporteur spoke to a 15-year-old boy who had been held for three months in the police lock-up for having stolen a packet of cigarettes from a store; another 18-year-old boy had stolen 400,000 lei (equivalent to a few United States dollars) from a car. The Special Rapporteur also spoke to individuals who had been detained because they were unable to pay fines; it was reported to the Special Rapporteur that, in some cases, for amounts as small as 400,000 lei individuals had been sentenced to serve 40 days in prison.

27. With the exception of Rahova penitentiary, just outside Bucharest, which was built recently, the facilities in most prisons are extremely old and decrepit. Craiova penitentiary, for

example, is over 100 years old. In all prisons the Special Rapporteur visited, the plumbing and electricity were primitive and badly in need of repair. In general, there was minimal natural light in the cells and the artificial light was dim, creating a dark and depressing atmosphere. The Secretary of State of the Ministry of the Interior informed the Special Rapporteur that 60 per cent of the detention centres in the country (114 out of 170) had been closed because they did not meet minimum standards. He also indicated that the amount of 5 billion lei was required to improve the hygienic conditions of the detention centres, but the Government simply did not have the funds. He said that that figure did not take into consideration the need for reconstruction.

28. The physical state of police lock-ups is also very poor. Although the problem of overcrowding is not as acute in the lock-ups, the cells are dark, dank and dingy. In most cases, the cells are located in the basement of the police station and have only a small window that provides minimal natural lighting. The heating is poor and the cells are extremely cold during the winter months. These conditions are exacerbated by the fact that the detainees are allowed only one hour a day outside of the cells for exercise. In poor weather, the detainees may choose not to go outside because the exercise yard is frequently open to the elements.

29. There are some reports of ill-treatment on the part of the staff of the penitentiaries, but it does not appear to be routine. However, some inmates did complain that they are intentionally placed in cells with violent inmates. The Minister of State of the Ministry of the Interior conceded that there is some criticism of the use of room leaders, that is, detainees selected by the prison warders to monitor anti-social behaviour and to protect against self-mutilation, which has become a serious problem in the prison system. He defended the use of room leaders as necessary because the prison staff is insufficient to monitor such a large prison population and there are not the financial means for other surveillance systems. This position was supported by the governor of Jilava penitentiary, who said that the ratio staff-inmates was 1 to 10. Based upon his visits, the Special Rapporteur does not believe that violence among the inmates is encouraged or tolerated by the prison officials.

30. The Special Rapporteur was appalled at the condition of two inmates he found in an isolation cell at the Jilava penitentiary. Both individuals had committed acts of self-mutilation and, as a result, had been placed in the isolation cells. On this visit, the Special Rapporteur was accompanied by a medical doctor from the ICAR Foundation, a torture rehabilitation centre based in Bucharest. The doctor was able to confirm what should have been obvious to even a layman, namely, that the wounds of each man were severely infected and that they were urgently in need of medical care. In one case, the governor explained that the inmate had driven a nail into his forehead to avoid going to court. He refused to have the nail removed and was then taken to a civilian hospital to have the nail removed. When he was returned to Jilava, the prison doctor certified that he could be placed in the isolation cell. The second inmate had swallowed metal items and also refused medical treatment. The governor explained that he had asked to be moved to the prison infirmary, but the prison doctor had refused. The inmate had then cut himself across the abdomen. In each case, the governor showed the Special Rapporteur the report signed by the prison doctor certifying each inmate to be fit for solitary confinement. The Special Rapporteur insisted that both men should urgently receive medical, including psychiatric, care, indicating that no matter how unreasonable it might seem,

individuals in that physical state could not be left in solitary confinement to die from their wounds. The governor informed the Special Rapporteur that both men would immediately be removed from the isolation cells and transferred to the infirmary.

31. The Special Rapporteur had received reports that the prison hospitals were a serious problem which required urgent attention. However, the Special Rapporteur made a brief tour of the Jilava prison hospital, one of five hospitals in the penitentiary system, and vast improvements appeared to have been made. The medical doctor accompanying the Special Rapporteur expressed the view that the conditions at the hospital were acceptable and comparable to civilian hospitals in Romania. The inmates in the hospital also expressed satisfaction with the care that they were receiving. The doctor explained that at times there had been a shortage of drugs, but that was currently not a problem.

## II. THE PROTECTION OF DETAINEES AGAINST TORTURE: LEGAL ISSUES

32. The Romanian Constitution prohibits torture and inhuman or degrading punishment or treatment. Similarly, article 267 (1) of the Criminal Code provides:

> "Pain or strong physical or psychic suffering intentionally caused to a person, especially in order to obtain from this person or from a third person information or confessions, to punish him for an act that he or a third person committed or is suspected to have committed, to intimidate or to exert pressure on him or on a third person, or for any reason based on a form of discrimination of whatever nature, when such pain or suffering is caused by the agent of a public authority or by any other person who acts under an official title, instigated by or with the express or tacit consent of such persons, is punished by from two to seven years' imprisonment."[1]

Where such acts result in the death of the victim, the perpetrator is punished by imprisonment for life or for from 15 to 25 years.

33. Article 68 of the Code of Criminal Procedure provides that "it is forbidden to use violence, threats, or any other constraints, as well as promises or encouragement, for the purpose of obtaining evidence". All the Special Rapporteur's interlocutors, including police officers, emphasized that evidence obtained by torture or ill-treatment is inadmissible in a court of law. Further, article 69 provides that "any statements given by the defendant may lead to the truth only to the extent that they are corroborated by facts and circumstances resulting from all the evidence resulting from the case". Similarly, article 27 of the Law on Police (Law 26/1994) prohibits the causing of physical or psychological pain to persons under investigation.

34. The investigation of police abuse is under the jurisdiction of military prosecutors. This system was widely criticized by non-governmental organizations and lawyers because there is a

[1] Based on an English translation of the Criminal Code provided by the Ministry of Justice.

perception that the military prosecutors are not independent of the police. However, the Procurator General noted that an advantage of this system is the fact that there are few links between the police and the military prosecutors, in contrast to civilian prosecutors who work with the police on a day-to-day basis. On the other hand, the Chief Prosecutor of the Military Prosecutor's Office at the Supreme Court of Justice conceded that in cases involving civilians the military prosecutors must rely extensively upon the police to carry out investigations because they do not have an intermediary body to assist them. He also noted that there are only 80 military prosecutors in the entire country, each of whom on average works on over 100 active files.

35. The Special Rapporteur received numerous reports concerning the inadequate investigation of allegations of police abuse. The case of Gabriel Carabulea, which the Special Rapporteur referred to in his report to the Commission on Human Rights at its fifty-fifth session (E/CN.4/1999/61, para. 599), was provided by lawyers as a clear example of the inadequacies of the present system. Gabriel Carabulea was arrested by three police officers on 13 April 1996 in Bucharest following a car crash in which he was involved. At the time of his arrest, the police report made no reference to any injury which Carabulea might have suffered in the car accident, and the driver of the other car involved in the accident testified that Carabulea had jumped from his car following the accident and had run from the scene. In a report submitted on 8 May 1996, the captain who conducted the interrogation at the police station stated that there were no signs of violence on Carabulea's body. Similarly, the chief of the lock-up, also stated in his report that there were no signs of violence on his body. On 16 April 1996, while still in police custody, Carabulea was taken to the infirmary of the Bucharest police station and examined by a medical assistant. Later that day, he was taken to the hospital of the Ministry of the Interior where he had a lung X-ray, which was negative. At 6.40 p.m. that day, he was taken to the Bucharest prison hospital at Jilava where he was admitted in critical condition. He was immediately transferred to a civilian hospital where he was diagnosed as having pulmonary thrombo-embolism (blood clots in the lung), paroxysmal tachycardia (profound cardiac insufficiency of the right heart chamber) and a permepatic haematoma. On 3 May 1996, Carabulea died. The medical report issued states that he died of pulmonary thrombo-embolism, severe pulmonary hypertension and thoracic and abdominal traumatisms due to the car accident of 16 April 1996.

36. During a visit to the hospital by his wife, Carabulea is reported to have told her that he had been brutally beaten by the police - specifically, hung from a locker and beaten while hanging, and, when he refused to confess to the robbery, rolled in a carpet and beaten with sticks. When his family viewed his body in the hospital on 3 May 1996, they observed large bruises around his abdomen and on his face, legs and genitalia. They were denied permission to remove the corpse and an autopsy was performed by the Forensic Institute. The military prosecutor issued an on-site report on 3 May stating that the patient had died from pulmonary thrombo-embolism and that a member of the medical staff had been told by the victim that the injuries were the result of a car accident in which he was involved on 13 April in which the steering wheel had hurt his thorax. The report also states that the doctor had seen no external signs of violence and no symptoms of any internal lesions.

37. Lawyers for the family of the victim allege that the military prosecutor made no attempt to contact the family. Nor were any of the family members or doctors questioned in the ensuing investigation. The military prosecutor also ordered the autopsy by the Forensic Institute. The

family members were not notified of the autopsy and no representative of the victim was present. The autopsy concluded that the immediate cause of death was acute cardio-respiratory insufficiency and that the determinant cause of death was "broncho-pneumonia".

38. On 8 May 1996, the wife of the victim filed a complaint with the military prosecutor's office in Bucharest, claiming that her husband had died following the administration of beatings by the police officers. Attached to the complaint was a medical certificate issued in May 1995 by the Clinical Physiology Institute certifying that Gabriel Carabulea was in good pulmonary pleural condition. The complaint also noted that the doctor in charge of the victim had found severe internal injuries which could not have been produced other than through beatings. The family also provided photographs taken following the victim's death that show bruises on his body.

39. Following an investigation by the military prosecutor's office, a decision of non-indictment was issued on 20 August 1996. In support of his conclusion, the military prosecutor referred to the conclusions of the forensic doctor and the police officers' denial that they had engaged in any physical violence. Following complaints from non-governmental organizations, on 12 February 1997, the Military Section of the General Prosecutor's Office issued a resolution overturning the 20 August decision, ordering a new investigation and specifying various issues that should be addressed in the new investigation. However, it is alleged by the lawyers for the victim that numerous issues relevant to the inquiry into alleged police ill-treatment were never addressed in the subsequent investigation despite the specificity of the instructions contained in the 12 February resolution. Moreover, the medical forensic expert examination, which was supposed to be carried out by experts of the Bucharest Forensic Medical Institute, was carried out by the same forensic doctor who had conducted the initial autopsy, who confirmed his initial findings. On 4 March 1998, another non-indictment decision was issued.

40. The Special Rapporteur notes that a decision to issue an indictment of prosecution for police abuse is at the sole discretion of the military prosecutor. In accordance with articles 275 to 278 of the Code of Criminal Procedure, complaints against a prosecutor's decision can only be filed hierarchically within the General Prosecutor's Office. There is no judicial review or oversight by any other body.

41. Pursuant to Law No. 54/1993, only active military officers may be appointed to serve as military prosecutors. Selection and training are undertaken by both the Ministry of Justice and the Ministry of Defence, but they are accountable for violations of military disciplinary rules. Also, the military prosecutors' salaries are paid by the Ministry of Defence and, in fact, are higher than those paid to civilian judges and prosecutors since they receive military allowances. Further, as active officers, they are subject to promotion or demotion by the Ministry of Defence.

42. With respect to the case of Gabriel Carabulea, the military prosecutor informed the Special Rapporteur that he had found no reason to reopen the case. However, he was prepared to review the facts once again. The Special Rapporteur notes that lawyers for the victim have filed a complaint before the European Court of Human Rights alleging violations of articles 2, 3, 6, 13 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. While the Special Rapporteur is not in a position to reach a conclusion on the merits

of this case, it raises serious concerns about the effectiveness of the investigation of torture on the part of police officials and is consistent with other reports that the Special Rapporteur has received.

43. The Special Rapporteur requested, but did not receive statistics on the number of complaints filed and prosecutions brought under articles 266 (Abusive behaviour), 267 (Abusive investigation) and 267 (1) (Torture) of the Criminal Code. The military prosecutor cited one case in which a policeman in Constanza had been sentenced to five years in prison and another case in which a policeman had been sentenced to 15 years' imprisonment for torture. It was a matter of concern to the Special Rapporteur that the Prosecutor General did not keep statistics on the number of cases withdrawn by civil prosecutors on the grounds that evidence had been obtained by illegal means, and that he was not able to provide statistics on the number of cases referred by civilian prosecutors to the military prosecutors. In this regard, the Procurator General indicated that if a suspect complains to a prosecutor that he has been subjected to violence in order to coerce a confession, the prosecutor may not use that statement, but he may take another statement. On questioning from the Special Rapporteur, the Procurator General conceded that a suspect may not feel secure in making a retraction when he knows he will be returned to police custody following his interrogation by the prosecutor. To this end, the Procurator General recommended that detention centres should be under the Ministry of Justice and not the Ministry of the Interior.

44. The Minister of Justice informed the Special Rapporteur that the Government has proposed legislation that would reduce the jurisdiction of the military prosecutors, transferring most crimes currently under the jurisdiction of the military courts to the civilian courts. Under this proposed legislation, only the crime of treason and crimes of war would fall under the jurisdiction of the military courts. The Minister indicated that the Parliament would probably consider this reform in the spring of 1999.

45. The Minister of Justice also informed the Special Rapporteur that he has the power to ask the Prosecutor General to initiate a criminal or administrative case against a prosecutor who is ignoring evidence of torture. However, to date he had not used this power, preferring to inform the Prosecutor General and then allowing him to proceed as he sees fit.

### A. Forensic Institute

46. The Special Rapporteur also received numerous reports alleging that medical certificates are frequently falsified to cover-up ill-treatment by the police. Professor Vladimir Belis of the Institute of Legal Medicine informed the Special Rapporteur that very few cases of police ill-treatment are in fact submitted to the Forensic Institute, but only a medical certificate issued by a forensic doctor is admissible in court. A medical certificate obtained from a private physician or a civil hospital should, however, be taken into account by the forensic doctor when he issues his or her own certificate. In the light of the allegations that the police interfere in the issuance of medical certificates, the Special Rapporteur was particularly concerned to learn that the police may request a new certificate to be issued by a higher-ranking forensic doctor if they are not satisfied with the initial forensic certificate issued. Professor Belis explained that, conversely, the alleged victim may also request the Forensic Institute to issue a new certificate, but must pay the cost of 8,500 lei.

### B. Ombudsman

47. In March 1997, the Parliament adopted Law No. 35 on the Organization and Functioning of the Advocate of the People Institution (The Ombudsman Act). The Office of the Ombudsman was established in May 1997 and the staff appointed in December 1997. The office currently has a staff of 70, of whom 50 are lawyers. The Ombudsman has the power, inter alia, "to take up and distribute complaints filed by persons who have been aggrieved by public administration authorities through violations of their civic rights and freedoms, and to decide on such complaints". He or she may take up cases on his or her own initiative or on the basis of complaints lodged by persons, as provided for under the law. However, the Deputy Ombudsman informed the Special Rapporteur that the Office is forbidden to investigate judicial issues and, therefore, it may not review a decision of a court or prosecutors. Nevertheless, she indicated that the Office may bring a case to the attention of the Prosecutor General if this is deemed necessary.

48. The Special Rapporteur was informed that only a small percentage of the cases that the Office of the Ombudsman handles involve allegations of police abuse; the majority of cases concern the restitution of private property. One problem that the Office has faced is a lack of cooperation from the public authorities, despite the fact that the above-mentioned law requires that "public authorities must communicate or, as the case may be, make available to the Advocate of the People, under the terms of the law, any information, documents or papers they have in their possession as may be linked with the complaints lodged with the Advocate of the People, while giving him support for the exercise of his powers". The Office of the Ombudsman has no authority to sanction a public authority that fails to cooperate. Further, any decision taken by the Ombudsman is a non-binding recommendation.

## III. CONCLUSIONS AND RECOMMENDATIONS

49. The Special Rapporteur wishes to express his appreciation to the Government of Romania and the Ministers and public officials he met for their cooperation in facilitating his visit and providing him with information. All his interlocutors were open and candid with the Special Rapporteur and he was impressed with the genuine interest shown by all of them in meeting international human rights standards and improving the conditions of those deprived of their liberty. He also appreciates the cooperation of the various non-governmental organizations, many of whom carry out their work under difficult conditions.

50. Tremendous progress has been made in the area of human rights in the 10 years since the communist regime was overthrown. Freedom of association and popular participation in the political process are now accepted features of Romanian life. The assertion by the Minister of Justice that there are no political prisoners in Romania today appears to be correct. Nevertheless, as is also the case in many of its neighbours in Central and Eastern Europe, political and economic liberalization has also brought about political and economic instability in Romania. Moreover, a notable crime wave has led to a lack of sympathy for criminal suspects among a large sector of Romanian society.

51. As to the incidence of torture and ill-treatment, the Special Rapporteur is of the view, based upon his observations during the visits and discussions he held in Romania, that torture and ill-treatment are not routine in the country. Nevertheless, as acknowledged by most of his government interlocutors, there are persistent, albeit sporadic, cases of police abuse. These interlocutors also noted that the problem mainly concerns non-commissioned officers, who receive little training. This view would seem to be corroborated by the fact that there appears to be a more serious problem in rural communities, where the police have less training. There is, however, some evidence that would support the view of many non-governmental organizations that the Roma are more likely to be the victim of police abuse than others.

52. With respect to legal safeguards to protect against torture or ill-treatment, the legal provisions are consistent with international standards. In particular, the law forbidding the detention of anyone for more than 24 hours without an arrest order from a prosecutor appears to be respected in practice. Nevertheless, the reported cases of police abuse primarily take place during this period, requiring greater vigilance on the part of the authorities to monitor detention in police lock-ups and any abuse of the extra 24-hour period for identification.

53. The Special Rapporteur is concerned that the system of investigation in which the military prosecutors have the exclusive authority to investigate and prosecute is ineffective. At a minimum, there is a perception that the military prosecutors lack independence and impartiality. While there have been a few cases in which police officers have been prosecuted and sentenced, in most cases the investigations result in decisions not to prosecute. It is also of concern that the military prosecutors are assisted by the police in these investigations.

54. The Special Rapporteur is also concerned that there is inadequate legal defence for indigent detainees. As noted above, most detainees with whom the Special Rapporteur met reported that they received little or no legal advice or guidance from ex-officio lawyers. The Special Rapporteur is likewise concerned that suspects are rarely informed of their right to a lawyer.

55. With respect to prison conditions, there is an urgent need to address the gross overcrowding that exists in the prison system. The Special Rapporteur considers that no State has the right to subject persons to these conditions, regardless of the constraints on its resources, the rigidities of its legal system or the time required to develop new facilities. The Special Rapporteur is in agreement with the President of the Senate Commission on Human Rights that the problem is not an exaggerated crime rate, but an exaggerated incarceration rate. First-time petty offenders simply do not need to be incarcerated, particularly in the light of the prison overcrowding.

56. The Special Rapporteur views the establishment of the Office of the Ombudsman as a positive development, but notes that it does not receive the cooperation from other government agencies that it requires to operate effectively. The Office also requires sufficient financial and human resources to carry out effective investigations. Further, the fact that the Office has received relatively few complaints concerning police abuse demonstrates that more information must be disseminated about the Ombudsman so that the general public has greater awareness of the role the Office can play in the investigation of abuse by government agents.

57. In the light of the above conclusions, the Special Rapporteur has formulated the following recommendations, many of which were urged on him by government interlocutors. Some of these recommendations have reportedly been presented to Parliament in draft legislation. The recommendations are:

(a) As a matter of immediate priority, action should be taken to remove from confinement in detention centres on remand all persons detained in excess of the officially proclaimed capacity of existing institutions. This recommendation could probably be substantially achieved by ordering the release pending trial of all non-violent first-time offenders;

(b) Much greater use should be made of existing provisions in the law for the release of suspects on bail, especially suspected first-time, non-violent offenders. Instructions or guidelines to this effect should be given by the Minister of the Interior to investigators from his Ministry, and by the Minister of Justice to all prosecutors and judges;

(c) The 1974 order regulating conditions of detention in police lock-ups should be immediately repealed and replaced with legislation that is available to the public;

(d) Prosecutors should regularly carry out inspections, including unannounced visits, of all places of detention. In this regard, a protocol should be established to provide guidelines on the measures to be taken during such visits. Written reports should be submitted for each visit. Similarly, the General Police Inspectorate should establish effective procedures for internal monitoring of the behaviour and disciplining of their agents, in particular with a view to eliminating practices of torture and ill-treatment. In addition, non-governmental organizations and other parts of civil society should be allowed to visit prisons;

(e) Legislation should be amended to place pre-trial detention centres under the authority of the Ministry of Justice;

(f) Video and audio taping of proceedings in police interrogation rooms should be considered;

(g) Legislation should be amended to transfer the power to investigate claims of police abuse and torture from military to civilian prosecutors. The investigation of allegations should be conducted by the prosecutor himself or herself and the necessary staff should be provided for this purpose;

(h) In the interim, civilian prosecutors should refer all allegations of police abuse to the military prosecutor in an expeditious manner; military prosecutors should diligently investigate all allegations of police abuse made by detainees;

(i) Prosecutors and the judiciary should speed up the trials and appeals of public officials indicted for torture or ill-treatment; sentences should be commensurate with the gravity of the crime.

(j) Civilian prosecutors should disregard any evidence obtained by illegal means and judges should be diligent in ensuring that all incriminating evidence obtained by such means is identified and excluded from the trial.

(k) Any public official indicted for abuse or torture should be suspended from duty pending trial.

(l) Priority should be given to enhancing and strengthening the training of all police officials, including non-commissioned officers; the Government should give consideration to requesting assistance from the Office of the High Commissioner for Human Rights to train police officials.

(m) Given the numerous reports of inadequate legal counsel provided by ex officio lawyers, measures should be taken to improve legal aid services.

(n) Legislation should be amended to allow for the presence of legal counsel in the first 24 hours of detention prior to the issue of an arrest warrant; moreover, police need to be issued guidelines on informing criminal suspects of their right to defence counsel.

(o) The Forensic Institute should be placed under the exclusive jurisdiction of the Ministry of Health, independent of the Ministry of the Interior and the Ministry of Justice. All forensic doctors should be properly trained in identifying the sequelae of physical torture or ill-treatment. The examinations of medical doctors selected by the detainees should be given weight in any court proceedings (relating to the detainees or to officials accused of torture or ill-treatment) equivalent to that accorded to officially employed doctors having comparable qualifications. Protocols should be established to assist forensic doctors to ensure that the medical examination of detainees is comprehensive. Medical certificates should never be handed to the police or to the detainee while in the custody of the police, but should be made available to the detainee once out of their hands and to his or her lawyer immediately.

(p) The Ombudsman should be granted powers to sanction any official who refuses to cooperate with the investigation of a complaint. The Office of the Ombudsman should be provided with the necessary financial and human resources to carry out its functions. A public awareness campaign should be established to make the public at large aware of the role that the Office can play in investigating complaints of police abuse.

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